

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

FILED
Clerk
District Court

MAR 14 2022

for the Northern Mariana Islands
By 
(Deputy Clerk)

BETTY JOHNSON, on behalf of
herself and as representative of
a class of similarly-situated
persons,

Plaintiff,

v.

RALPH DLG. TORRES, Governor of
the Commonwealth of the Northern
Mariana Islands ("Government"),
et al.,

Defendants.

) Case No. 09-00023

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) **CERTIFIED**

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) United States District Court

) 1671 Gualo Rai Road

) Saipan, MP 96950

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)

) February 3, 2022

) 1:43 p.m.

TRANSCRIPT OF PROCEEDINGS

MOTION HEARING

BEFORE THE HONORABLE FRANCES TYDINGCO-GATEWOOD,
DESIGNATED JUDGE

STENOGRAPHICALLY REPORTED BY:

Heidi M. Doogan, RPR
Federal Official Court Reporter
1671 Gualo Rai Road
Saipan, MP 96950

1 APPEARANCE OF COUNSEL:

2 FOR THE PLAINTIFF:

3 BY: Nicole M. Torres-Ripple, Esquire
4 NMI Settlement Fund
5 P.O. Box 501247
6 Saipan, MP 96950

7 FOR THE ADMINISTRATRIX:

8 BY: Robert T. Torres, Esquire
9 Robert T. Torres Law Group
10 P.O. Box 503758 CK
11 Saipan, MP 96950

12 ALSO PRESENT:

13 Joyce C.H. Tang, Trustee (via Zoom)

14 Colleen V. Manglona, Administratrix
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(In open court:)

THE COURT: So do you want to go ahead and call the case.

THE COURTROOM DEPUTY: Yes. Yes, I will do that. This is civil action number 09-00023, Betty Johnson, et al., versus Rob DLG. Torres, et al., coming up for a motion hearing. Will the parties please state your appearance.

MS. TORRES-RIPPLE: Nicole Torres-Ripple for the NMI Settlement Fund.

Online is Trustee Joyce Tang. And with me in the courtroom is Administrator for the Settlement Fund, Lillian Pangelinan.

THE COURT: Okay. And thank you. Good morning -- or, actually, good afternoon. Hafa Adai, (speaking Chamorro).

Where are you guys, Middle Road?

THE COURTROOM DEPUTY: Gualo Rai.

THE COURT: This is Judge Tydingco-Gatewood. What I wanted to -- just -- just practicing my Chamorro.

All right. I wanted to -- Ms. Lillian is -- Pangelinan, right; is that correct?

MS. TORRES-RIPPLE: Correct.

THE COURT: And she is seated behind you, if I'm not mistaken, with the black mask on. Is that right?

MR. TORRES: Yes, Your Honor.

1 THE COURT: Very well. Thank you. All right. Go
2 ahead, continue on, Francine.

3 MR. TORRES: Your Honor, good afternoon. This is
4 Robert Torres on behalf of the Respondent for the Estate of
5 Manuel B. Villagomez. Colleen Manglona, who is with me here at
6 counsel's table is the Administratrix. And also present are --

7 THE COURT: Okay.

8 MR. TORRES: -- several members of the family, who
9 are the heirs in the Estate, so we're here for the Respondent,
10 the Administratrix.

11 THE COURT: Okay. Thank you. And good afternoon,
12 Mr. Robert Torres. Hafa adai, and Colleen Manglona, the
13 Administratrix, and the family members, who, I assume, are
14 sitting behind you and Ms. Manglona; is that correct,
15 Mr. Torres?

16 MR. TORRES: Yes, Your Honor.

17 THE COURT: Okay. Very well. Okay. The Court has
18 before it a request by the Trustee as a motion requesting the
19 following relief: That the Court declare that the -- this
20 Court has exclusive jurisdiction over any matters pertaining to
21 or arising under the Settlement Agreement.

22 Secondly, to stay all proceedings by any other court
23 that would seek to issue orders adjudicating the rights and
24 liabilities of the settlement fund or its members pertaining to
25 the Settlement Agreement.

1 And, thirdly, to enjoin the Administratrix from
2 asserting any claimed defenses or seeking any relief related to
3 the Settlement Agreement and the Settlement Funds claimed
4 against the Decedent Manuel B. Villagomez in any court other
5 than the United States District Court for the Northern Mariana
6 Islands.

7 This Court is sitting by designation, as all parties
8 know.

9 And who's going to argue this? Will this be you,
10 Ms. Torres-Ripple?

11 MS. TORRES-RIPPLE: Yes, Your Honor.

12 THE COURT: Or Ms. Tang? Okay. Very well.

13 You may proceed.

14 MS. TORRES-RIPPLE: Thank you.

15 First, I'd like to thank the Court for -- for
16 expediting -- for granting this expedited hearing. Your Honor,
17 this is a simple, straightforward case. We are here seeking
18 enforcement of Section 10.0(k) of the Settlement Agreement, the
19 Alternative Dispute Resolution provision, which applies to all
20 class members for claims of overpayment, and has been approved
21 by this Court. There's no dispute that if a member were alive,
22 he or she would be required contractually to resolve a claim in
23 the Administrative Appeals process, but the transition
24 particulars argues without support that the same process should
25 not apply when a member passes away with a pending claim. And,

1 in other words, the claim should be litigated outside of the
2 Administrative Appeals process.

3 Now, there's no question that this Court has
4 exclusive and continuing jurisdiction under the Settlement
5 Agreement to enforce its terms and entertain the settlement
6 funds motion. It is well-established that Federal Courts
7 have -- have jurisdiction to enforce the Settlement Agreement
8 when the final order incorporates this terms of the Settlement
9 Agreement. And this Court did so here. This Court
10 incorporated the Settlement Agreement and consent judgment in
11 the final judgment approving the class action settlement. The
12 Court reserved exclusive and continuing jurisdiction to
13 enforce -- to enforce and interpret the Settlement Agreement
14 and its terms.

15 Now, with respect to the probate exception. The
16 probate exception doesn't apply. The Supreme -- the U.S.
17 Supreme Court has made clear that the application of the
18 probate exception is distinctly limited and narrow in scope.
19 It precludes the Federal Courts from -- from -- in
20 circumstances that involve the probator: annulment of a will,
21 the administration of the estate, and ordering the transfer of
22 funds or property in the custody of the State Probate Court.
23 We're not seeking any of this. We are here seeking enforcement
24 of a term of the Settlement Agreement with respect to the
25 Alternative Dispute Resolution provision. We are not asserting

1 control of the assets. Now, the Administratrix cites two main
2 cases in support of its proposition that the probate exception
3 applies, but these are distinguishable.

4 The first case, the Carpenter's Trust Fund case in
5 Michigan, the Administratrix argues that this Court should hold
6 like the trust fund case held, when a member dies, the probate
7 court should -- mandates that a claimant bring a claim in the
8 probate court when the funds sought are in the hands of the
9 State Probate Court. However, this is distinguishable.

10 We are here to ask that this Court enforce the
11 Administrative Appeals process. If the Settlement Fund
12 prevails in that process, at that point, we would seek to
13 enforce the judgment.

14 The second case that the Administratrix cites is the
15 Balestra case. They cite to this for the proposition that a
16 declaratory judgment seeking a share of the decedent's estate
17 would interfere with the distribution of the estate. This is
18 also distinguishable. The Settlement Fund does not seek an
19 adjudication of the claim of overpayment against the Decedent,
20 but rather the enforcement and interpretation of a contractual
21 term in the Settlement Agreement. And this has been
22 incorporated in this Court's final judgment.

23 By way of example, the Administratrix asserts that if
24 this Court were to require the Estate to go through the
25 Administrative Appeals process, it would disturb the

1 distribution of property. And they cite to the probate -- the
2 probate court's recent order approving the sale of the boat.
3 Right now, we're not adjudicating the claim. We are seeking to
4 enforce. And if we prevail on that claim of overpayment, we
5 would then seek to enforce it in the probate court. Just like
6 any other creditor or claimant, we have the right to object to
7 distribution under the probate court.

8 Now, in addition to this, they argue -- the
9 Administratrix argues that there's some kind of transfer of
10 jurisdiction to the Administrative Appeals process. This
11 assertion is factually and legally incorrect. Nowhere in the
12 Settlement Agreement does it say that there's a transfer of
13 jurisdiction to the settlement fund appeals office. This Court
14 didn't assign anything to the office. We're here asking for
15 enforcement of the Alternative Dispute Resolution provision.
16 This is no different from a mortgage. There are certain rights
17 afforded to a lender. If -- if a person defaults, and if you
18 haven't paid off that mortgage, upon death, then your heirs are
19 still subject to the terms of the mortgage, including any
20 arbitration provision. The Settlement Agreement requires all
21 members to go through the Administrative Appeals process.

22 Now, as an aside, the Administratrix further confuses
23 the issue by discussing untimely claims in other probate cases.
24 This has nothing to do with this case. It's irrelevant to the
25 issue before this Court. However, I'd be happy to address it

1 briefly.

2 At the time the Settlement Fund wasn't aware of
3 probate -- certain probate cases. When a member passes away,
4 there's no process by which the Government informs the
5 Settlement Fund of the death of a certain -- of members. And
6 since then, we've taken measures to ensure that this doesn't
7 happen again, including reviewing the newspaper notices on a
8 daily basis, reviewing the court calendar, the Superior Court
9 calendar, notifying the surviving spouse of pending claims, or
10 pending appeals, and prioritizing the audit of deceased members
11 and those deceased members with surviving spouses.

12 This case boils down to this: There's a contract
13 between the Settlement Fund and the member, which is binding on
14 the members, heirs, successors, and assigns under the terms of
15 the Settlement Agreement. They are contractually bound under
16 Section 10.0(k) of the agreement to resolve disputes with
17 respect to the claim over -- through the Administrative Appeals
18 process.

19 Now, finally, as the Court had pointed out at the
20 beginning, the Settlement Fund seeks a declaration that this
21 Court has exclusive and continuing jurisdiction on matters
22 relating to the Settlement Agreement, including the
23 Administrative Appeals process as it relates to deceased
24 members, heirs, successors, and assigns. We seek an order
25 enjoining the Administratrix from asserting claims or defenses

1 relating -- or seeking relief relating to the Settlement
2 Agreement. And the Settlement Fund's claim against the
3 Decedent outside of the Administrative Appeals process. And to
4 the extent this Court needs additional time to issue a
5 decision, we seek an order directing a stay of proceedings by
6 any court outside this Court from issuing orders adjudicating
7 rights and liabilities of the Settlement Fund or its members as
8 it relates to the Settlement Agreement.

9 Thank you, Your Honor.

10 THE COURT: I'm sorry. So just -- okay. So hold on
11 a second, Counselor.

12 MS. TORRES-RIPPLE: Uh-huh.

13 THE COURT: With regard to your last argument --

14 MS. TORRES-RIPPLE: Yes, Your Honor.

15 THE COURT: -- you're essentially asking -- you're --
16 can you hear me okay?

17 MS. TORRES-RIPPLE: Yes, Your Honor.

18 THE COURT: Are you able to hear me? Okay. Thank
19 you. I'm in my courtroom, so I just -- okay.

20 So I'm just wanting to ask, are you asking the Court
21 to stay the probate action in the Superior Court of the CNMI?
22 Essentially, that's what you're doing. You're just saying,
23 "Don't touch this matter"?

24 MS. TORRES-RIPPLE: To the extent that -- to the
25 extent that this Court needs time to issue a decision on this

1 matter, yes.

2 THE COURT: Well, I would not be inclined to do that,
3 but, don't worry, I can issue my decision quickly. I don't
4 need a lot of time to issue a decision, but my -- I think
5 that -- I think it's clear to the Court that the probate
6 exception would bar such an action by this Federal Court to do
7 that to the State -- or the Territorial Court, so I -- I just
8 don't -- I'm not in agreement with that -- that argument.

9 I -- I do want to say -- so you're just saying just
10 for purposes of buying time, you're asking me to do that, but I
11 just don't think I have jurisdiction or authority to do that,
12 Counselor, Ms. Torres-Ripple.

13 So just to get back to, this is Mr. Villagomez, and
14 it was he that was a retiree who retired in March 1994. And as
15 I recall looking at the facts of this case, as of April 30th,
16 2012, which is a long time ago, he was informed on May 7th,
17 2012, that he was being overpaid in the amount of \$45,680.36.
18 And as -- as I, you know, continue to look at the facts, it
19 says now, if we fast-forward, you know, the Board continued to
20 pay him these overpayments and they did not -- there was no
21 resolution as to this overpayment issue until now we're --
22 we're -- it's coming to a head; is that correct? Now, is that
23 correct, not that the appeals --

24 MR. TORRES: The appeal was still --

25 THE COURT: Right. Okay.

1 MS. TORRES-RIPPLE: The -- the --

2 THE COURT: Okay. So --

3 MS. TORRES-RIPPLE: Sorry. The --

4 THE COURT: Go ahead.

5 MS. TORRES-RIPPLE: Just to be clear, the appeal was
6 pending during the transition period when the Settlement Fund
7 took over. So, yes, the appeal was pending.

8 THE COURT: Right. So -- so from the moment that he
9 received notice in 2012 to the time he passed away on May 10,
10 2021, and even up to now, he's still getting alleged
11 overpayments; is that correct?

12 MS. TORRES-RIPPLE: There are no longer anymore
13 overpayments, because as of his date of death, it was -- once a
14 person dies, you're -- the benefits cease.

15 THE COURT: Oh, I'm sorry. So as of May 10th of
16 2021, then, he has no -- he has not received any -- there's
17 been no -- nothing else gone to his -- his account; that's
18 what you're saying, the moment he passes away? And that amount
19 ended up at -- I just want to clarify something, over 65 -- or
20 59,000 -- or \$56,913; is that correct?

21 MS. TORRES-RIPPLE: Yes, the amount is \$56,913.77.

22 THE COURT: So from --

23 MS. TORRES-RIPPLE: And it's not necessarily from the
24 moment that he passes. It's from the moment we're informed
25 that somebody passes away. So...

1 THE COURT: Okay.

2 MS. TORRES-RIPPLE: Yeah.

3 THE COURT: So -- so whatever date that is, whichever
4 -- whichever is the date, okay. So he -- so from 2012 to the
5 date that the -- that your office was informed that he had
6 passed away, there's an alleged overpayment amount that has now
7 amounted to \$56,913.17, correct?

8 MS. TORRES-RIPPLE: Your Honor, we actually -- what
9 we do with the computation of the overpayment, is we limit
10 the -- the overpayment amount to six years from the date of the
11 adverse decision letter. So the date of the adverse decision
12 letter is May 2012, and it's six years from that date all the
13 way through his date of death. And if there were -- there were
14 an overpayment, as in this case, after his death, because we
15 weren't notified on time, the overpayment is through five --
16 May 15, 2021.

17 THE COURT: From what date to May 2021?

18 MS. TORRES-RIPPLE: From May 7th --

19 THE COURT: I guess, I'm -- can you clarify?

20 MS. TORRES-RIPPLE: -- 2006.

21 THE COURT: May 7.

22 MS. TORRES-RIPPLE: 2006. So that's six years from
23 the date of the adverse decision letter, through May 15, 2021.
24 So it's little after his date of death on May 10th.

25 THE COURT: Okay. All right. From May 7th, 2006.

1 Okay. All right. And so on the first issue of
2 jurisdiction, the -- the other side, the Administratrix, I'll
3 say Ms. Manglona represented by Mr. Torres, is indicating
4 that -- well, they first argue about diversity jurisdiction,
5 federal question, and so forth. So the Court doesn't agree
6 with that. But with regard to the issue of -- that you have
7 pointed forward, is you're asking the Court to specifically
8 rule on the very narrow interpretation of the Settlement
9 Agreement that was approved by and worked on by -- by
10 Judge Faris; is that correct? And that's Section --

11 MS. TORRES-RIPPLE: Yes.

12 THE COURT: -- 10?

13 MS. TORRES-RIPPLE: K.

14 THE COURT: Go ahead.

15 MS. TORRES-RIPPLE: Yes, Section 10.0(k) of the
16 Settlement Agreement is what we seek to enforce, and that's the
17 alternative dispute.

18 THE COURT: Right. Okay. So we're looking --

19 MS. TORRES-RIPPLE: Uh-huh.

20 THE COURT: Right. The alternative dispute. And so
21 we now have -- we have a mediator judge, Judge Collins, who is
22 handling the -- these -- the process, right, the appeals
23 process?

24 MS. TORRES-RIPPLE: Yes, Your Honor. So it's
25 mandatory medi- -- the process is mandatory mediation before

1 Judge Collins. If we aren't able to resolve it at that point,
2 it goes to the hearing officer. And if, you know, one party or
3 the other does not agree, it goes to an arbitrator for a final
4 decision without any further right to appeal.

5 THE COURT: Okay. I'm sorry. So it goes to Judge
6 Collins first, then --

7 MS. TORRES-RIPPLE: Yes.

8 THE COURT: -- if they don't like his decision, it's
9 appealed to a hearing officer. And then what happens after
10 that?

11 MS. TORRES-RIPPLE: The arbitration -- the arbitrator
12 is -- kicks in, so the arbitrator would issue a final decision
13 and there's no further right to appeal.

14 THE COURT: Okay. And since -- since the rules and
15 regulations have been approved by the Court, how many of these
16 claims have been settled; do you have an idea?

17 MS. TORRES-RIPPLE: You know, in our last report to
18 the Court --

19 Okay. In our last report to the Court, we reported
20 that there was an audit of 132 files, 57 of which were
21 resolved, and 27 pending an administrative proceeding. So this
22 was as of December 10, 2021. Of course, this Court issued an
23 order appointing Judge Collins as the mediator. And since
24 then, we actually started the process almost immediately.
25 We've since settled a few cases, and there are more cases up

1 for mediation.

2 THE COURT: Okay. Very well.

3 All right. I'll come back to you, then. Thank you.

4 Let me just hear from Mr. Torres. Okay.

5 MR. TORRES: Your Honor, good afternoon.

6 THE COURT: Well, Mr. Torres, wait. Let me -- let
7 me just ask you questions --

8 MR. TORRES: Sure.

9 THE COURT: -- Mr. Torres, if you don't mind.

10 MR. TORRES: Nope.

11 THE COURT: All right. Let's see. Thank you. In
12 all your experience, you can handle this. The -- the
13 complaint, the second-amended complaint, asserted that the
14 Federal Court had federal -- questioned jurisdiction over the
15 action. And, as you know, no party ever contested jurisdiction
16 over the original action. And the parties to the Settlement
17 Agreement consented to the Court's exclusive jurisdiction to
18 enforce and interpret any provision of the Settlement Agreement
19 and to enjoin any entity from pursuing any action that is
20 consistent -- inconsistent with the Settlement Agreement. And
21 I -- you know, I cite -- the Court just cites to Settlement
22 Agreement, paragraph 28. And the judgment contains similar
23 language.

24 As I -- as I review the documents filed by Ms. Nicole
25 Torres-Ripple, the Settlement Fund's emergency motion of that

1 Settlement Agreement, and I'm sure you're going to -- you're
2 not going to dispute that Mr. Villagomez was a member of the
3 settlement class and you're not going to dispute that he did
4 not opt out; is that correct?

5 MR. TORRES: That's correct, Your Honor.

6 THE COURT: And, also, with regard to the Settlement
7 Agreement, I'm certain that you probably will not -- well,
8 you're not going to dispute, as well, that any -- any heirs,
9 successors, and assigns to the parties, would be -- would also
10 have to abide by the Settlement Agreement terms, right?

11 MR. TORRES: Yes, Your Honor.

12 THE COURT: Okay. And so, again, the judgment -- the
13 judgment also specifies -- specifies that, so I'm just -- so
14 I'm just curious on this issue of jurisdiction then, based on
15 that, then it seems to -- to me that it's clear that the
16 Administratrix, Ms. Manglona, is subject to the jurisdiction of
17 the Federal Court as well as to the terms of the Settlement
18 Agreement and judgment --

19 MR. TORRES: Okay.

20 THE COURT: -- wouldn't you say?

21 MR. TORRES: Well, I'll answer the question. So
22 one -- one operative word in the -- in the Settlement Agreement
23 is the jurisdiction of the Court, not only to enforce,
24 Your Honor, but there's also to interpret and construe.

25 THE COURT: Okay.

1 MR. TORRES: Okay. So that's -- that's my box that
2 I'm going to stand on primarily. Because the -- the case
3 law -- from the case law that we've been reviewing, none of the
4 cases discuss a process in -- under the jurisdiction of the
5 Federal Courts over a probate matter, over a probate issue,
6 any -- from Markham to Marshall, any of the cases cited, none
7 of them ever discuss, even in the Carpenter's Trust case, none
8 of them ever discuss --

9 THE COURT: Uh-huh.

10 MR. TORRES: -- an administrative tribunal
11 adjudicating a claim in probate that sounds of probate. It's
12 always the Federal Court, that's kind of my point.

13 THE COURT: But are we -- but let -- but let me just
14 ask you, are we really adjudicating and trying to --
15 interfering with a probate estate, we're really not at this
16 point. All that -- all that, look, let's just think about
17 this, we -- I mean, just on practical terms, and I'm -- I'm
18 thinking out loud here, so I may be wrong, so -- but, I'm just,
19 you know, as I think about using my common sense, we have the
20 Settlement Fund Trustee and she's saying, "Look, we just
21 interpret the contract. Let us find out" -- let -- let -- and
22 the contract -- the contract, this particular section, this
23 particular paragraph, that we're talking about, we're
24 interpreting -- that this Court's interpreting is -- is --
25 includes this whole appellate process, this settlement claim

1 process. And we're just saying, "Look, just go through the
2 process. Everybody agreed to it, just go through it." Who's
3 to say that Judge Collins or whoever, you know, if they go to a
4 hearing officer, an arbitrator won't come back and say, "Look,
5 from this period to this period, yeah, maybe" -- and I don't
6 know if I'm thinking out loud too loud -- but maybe the
7 Retirement Fund screwed up, and it's their fault and it's
8 not -- it's not the Manglona family fault. But for some period
9 of time, it could be -- it could be, like, okay, maybe I'm
10 going to give them a break, you know, for some period of time.
11 Whatever that period of time might be in the -- in the range
12 that -- that the Trustee has discussed. I mean, they're just
13 really saying, "Just go through the process." Once the process
14 is done, and there's a -- a decision, and it's completed, then
15 there's no reason why the Administratrix can't still proceed
16 with her probate matter in -- in the local court. I mean, she
17 can proceed with it even simultaneously. But I'm just saying,
18 as it relates to this particular property, this particular
19 amount of money that we're talking about, why can't they do
20 that?

21 MR. TORRES: Okay.

22 THE COURT: And doesn't -- and doesn't the probate
23 exception, you know -- you know, there's a question as to
24 whether or not is the Court precluded from providing the relief
25 requested by the Settlement Fund under the probate exception?

1 And I'm -- all of you cited the Marshall -- the
2 Marshall v. Marshall case, which is really a fascinating case,
3 and the Markham case. You know, just looking at that very
4 narrow exception, what about that? I mean, just the way in
5 which --

6 MR. TORRES: Well --

7 THE COURT: -- that has been interpreted and
8 reviewed.

9 MR. TORRES: Okay. I -- I want to answer it, but
10 I'm -- you know, the Court's thrown -- I want to answer the
11 question, Your Honor, and I want to engage in the discussion
12 and so, but we need to clarify --

13 THE COURT: Go ahead.

14 MR. TORRES: -- some facts here, because -- I'll give
15 you an example.

16 THE COURT: Okay.

17 MR. TORRES: On -- on her own action, the Trustee
18 says here today when the Court asked, "You're asking for
19 56,000." And the Trustee answered your question and said,
20 "Well, wait a minute, we're only asking for six years, from --
21 from either 2012," right. Doesn't the Court wonder, "Well, why
22 are you asking only for six years since you claimed 46,000 in
23 2012? Wouldn't it be more a whole much more than six years?"
24 The answer to that, is a claim in contract theory in the CNMI
25 is limited to six years for a breach of contract claims.

1 That's why --

2 THE COURT: We have to -- we have to respect -- yeah.

3 MR. TORRES: Right, but --

4 THE COURT: I mean, this Court, we're required to
5 respect the law of -- of the Commonwealth.

6 MR. TORRES: But that's -- that's not my point. Is
7 that you have the Trustee making these calls and they can make
8 the calls as to when they pick and choose what they're going to
9 enforce and then the Administratrix -- may I use the ELMO,
10 Your Honor --

11 THE COURT: Yes.

12 MR. TORRES: -- just to drive the point home?

13 THE COURT: Sure. Go ahead.

14 MR. TORRES: So I'm showing on page 20 of the -- of
15 this -- of the Settlement Agreement. And this is page 20 that
16 talks about the Court, the Trustee's duties, okay?

17 THE COURT: Uh-huh.

18 MR. TORRES: And the Trustee's duties -- and this is
19 from 2013. Remember that in May 2012, Mr. Villagomez perfected
20 his appeal. So in a year later, a member of the class, he's
21 bound, yes. And here's what he's bound to: When the Trustee
22 has to establish policies for members of -- a resolution of all
23 disputes consistent with due process and a right to a final
24 appeal. But, Your Honor, it's through an independent
25 arbitrator selected by the Trustee and approved by the District

1 Court. There shall be no further appeal from the decision of
2 the arbitrator. And so, this is -- and then the next paragraph
3 talks about the Trustee, which she never did here, can petition
4 the Court for instructions or for declarations as to the
5 construction of this agreement or the powers of the Trustee.

6 Now --

7 THE COURT: Okay.

8 MR. TORRES: Okay. So what happens after that?

9 Well, what happens after that, Your Honor, is you issued an
10 order in 2015. This is your order. There's been many orders
11 by this Court, but in this order of December '15 with
12 Mr. Villagomez's appeal pending on the third page, you had
13 the -- the Trustee finalized the administrative rules and
14 procedures. And the Court -- the Court approved the rules and
15 find them to be reasonable in the implementation and appointed
16 three administrative hearing officers and one arbitrator.
17 And -- and they're all there in 2015. Your Honor, nothing
18 happens for Mr. Villagomez's appeal from 2015 when everything
19 was in place. And somehow, you know, it's -- it's blindly
20 disregarded that wait a minute, he's been waiting since 2012.
21 Everything is in place, but then in their claim, they pick and
22 choose six years. We'll only go six years. Well, what about
23 Mr. Villagomez's due process that he was denied all the way up
24 until the time that he died? Why can't he assert defenses of,
25 you know, laches and breach of contract, which is what the

1 Administratrix had asked when going for the -- the Superior
2 Court.

3 And, Your Honor, I mean, I -- I think it's fair, if
4 he's a member of the Settlement Fund, for the Administratrix
5 today to turn to Your Honor and say, "Your Honor, can they
6 explain why they waited, you know, at least from 2015 and never
7 did anything, and now we've got Judge Collins? We had
8 mediators back then and they didn't do anything."

9 So, okay -- so let's go back to the -- to the issue
10 here. The Trustee stands on --

11 THE COURT: Okay. Okay, so -- okay, hold on a
12 second, Mr. Torres, so -- I mean, I think you make a point. So
13 we have -- let me just get the times down here.

14 MR. TORRES: Yeah.

15 THE COURT: The -- let me just make sure. Okay. So
16 we have the retiree -- I mean, Mr. Villagomez retiring on March
17 1, 1994.

18 MR. TORRES: Right.

19 THE COURT: And then he receives notice in 2012?

20 MR. TORRES: Yes.

21 THE COURT: We -- okay. We see that. And then --
22 and then in 2015, you're correct, the Court did sign an order.
23 There was -- in 2015 an order --

24 MR. TORRES: Settlement Agreement --

25 THE COURT: -- order indicating that looks --

1 MR. TORRES: Settlement Agreement in 2013.

2 THE COURT: Right.

3 MR. TORRES: Right.

4 THE COURT: There's and -- and that's in -- I'm
5 sorry, 2015. In 2015, there's approval of the NMI Settlement
6 Funds Appeals Process, right? We see that?

7 MR. TORRES: Yep.

8 THE COURT: Okay. We've got that. So 2015. And
9 then -- so then '16, '17, '18, '19 -- six years later, Mr.
10 Villagomez dies on May 10th, 2021, right?

11 MR. TORRES: Correct.

12 THE COURT: Right?

13 MR. TORRES: Yep.

14 THE COURT: Okay. And then -- and then it's not
15 until -- until -- let's see. Okay.

16 MR. TORRES: Not now --

17 THE COURT: January 10th, 2022, the Settlement Fund,
18 so that's just a few -- well, that's just last month --

19 MR. TORRES: Yep.

20 THE COURT: -- this is February, the Settlement Fund
21 writes to the Administratrix, your client, to inquire whether
22 she would stipulate to a limited stay of the probate action,
23 okay.

24 Okay. But, at the same time, there's an indication
25 that now since -- until the claim of overpayment had grown to

1 \$56,913.17, that's what we were --

2 MR. TORRES: Right.

3 THE COURT: Remember, I was asking that of --

4 MR. TORRES: Right.

5 THE COURT: -- Ms. Ripple-Torres [sic]. So that's
6 2021. So you're -- you're saying that from the -- from the
7 period of 2015 to now, your client wants to be able to appeal
8 her -- her position, whatever that position might be, whether
9 it's legal defenses or what other type of --

10 MR. TORRES: Well, hold on, Your Honor.

11 THE COURT: -- picture -- excuse is -- go ahead.

12 MR. TORRES: My apologies.

13 THE COURT: Uh-huh. Go ahead.

14 MR. TORRES: When -- what -- when the Administratrix
15 requested a status conference, right, she asked --

16 THE COURT: Uh-huh.

17 MR. TORRES: -- asked the Superior Court for a status
18 conference in order to request the Settlement Fund to clarify
19 and give some more details as to the basis of its claim, what's
20 the theory of your recovery? Is it contract theory? Are we
21 able to raise any defenses? Are we able to, you know, what
22 is -- give the particulars of your claim and so that the
23 Administratrix can make a determination, as she should, with
24 every Administratrix, to determine whether or not to allow or
25 disallow. She has to -- that's her fiduciary duty, right?

1 THE COURT: Okay.

2 MR. TORRES: So -- and that's what happened. And
3 then the Fund didn't respond to that, they only came in on the
4 status conference and responded and asked -- didn't even ask
5 for a stay, but requested the Court to -- this Court to do --
6 they didn't file any motion for a stay. I mean, it was just --
7 there was no response to -- to our filing after they filed
8 their claim in Superior Court, and that's the first point of
9 my -- of my argument, is the ad- -- the Trustee has come into
10 the Superior Court, like in the Hofschneider and the Benavente
11 cases to file their claims.

12 They say, "Well, you know, we didn't know then and so
13 it was untimely," that's not -- that's irrelevant. The point
14 is, they came before -- because Markham stands for the
15 proposition that state courts of probate are the ones with
16 jurisdiction, but not -- not totally exclusive, unless, you
17 know, with the Federal Courts, but they didn't cite --

18 THE COURT: Uh-huh.

19 MR. TORRES: -- the -- they didn't cite the
20 Settlement Agreement. They didn't cite anything to say the
21 administrative process.

22 And by the way, in Benavente, as I pointed out, the
23 Estate of Benavente, Benavente didn't even appeal his -- the
24 adverse decision. He didn't appeal it. And they -- and
25 they -- so when they didn't appeal it, they just said, "Okay,

1 well, we're just going to stay your appeal," even when he
2 didn't appeal it. And so they came in after he died, and that
3 was untimely as well. My point is that the -- the Trustee, if
4 she knows the Settlement Agreement and if she knows the
5 jurisdiction of this Court, and those two cases never did, and
6 even -- even in her motion for a stay, has never brought up the
7 probate exception. Your Honor brought up the probate exception
8 discussion, and thank you for that, because that's the issue.
9 That's the issue here. And the --

10 THE COURT: Yeah.

11 MR. TORRES: -- and the Trustee stands on, well, we
12 have an agreement. But, Your Honor, my problem, if I may call
13 it that, I struggle with the fact that all the cases from
14 Markham and its progeny, say that it's not an administrative
15 tribunal. I know Your Honor is saying, "Well, what's the harm
16 if" -- "if you go to mediation" -- by the way, probate courts
17 in the CNMI do not compel mediation, but the parties can do so.
18 Okay.

19 THE COURT: Uh-huh.

20 MR. TORRES: But there is -- there is -- and, of
21 course, there's settlement. And by the way in Ms. -- in this
22 probate case, the -- the Administratrix has not received any
23 notice of this administrative appeal, she hasn't to date.
24 They've -- they've indicated that they have calendared it, but
25 she wasn't received any notice in filing.

1 Now, let's talk about -- so that's my -- what I was
2 going to say about what I struggle with is that all the cases
3 that we've looked at, including the -- the FTC case, it's the
4 District Court that adjudicates the probate issue, not an
5 administrative tribunal. Because if -- if the Settlement
6 Agreement says that it's -- this administrative appeal is to be
7 consistent with due process, then we submit that Mr. Villagomez
8 never received due process and will not receive due process.

9 Why? What is the Trustee's claim in nature? Put
10 aside the Settlement Agreement and the administrative process,
11 put it aside. What is it? She's seeking a recovery action
12 under 83.19 under the statute for an overpayment.

13 Your Honor, look at the statute. The statute says
14 about the law that you -- when you've overpaid, the
15 Administrator of the Settlement Fund now has to go now and
16 recover and it also reads against the Estate. That's where we
17 stand on is by statute. And, of course, as Markham discusses,
18 it's committed to the state courts. Nothing -- nothing fancy
19 there.

20 But what happens when a probate issue is presented to
21 the Federal Court? In every case, the Federal Court takes the
22 case, even the Tolosa case in Guam is a federal case. In the
23 pension fund case in Carpenter's Trust, it's the Federal Court.
24 In Markham, it's the Federal Court. It's either an independent
25 federal question or diversity. But when it's dealing with a

1 probate action, and -- and you say the probate exception
2 doesn't apply, it's only the Federal Court that handles it, not
3 here. So going back to the Settlement Agreement, if it is the
4 purview and the jurisdiction of this Court to not only enforce,
5 but interpret the Settlement Agreement, then the Court cannot
6 be countenance to Trustee's request to disregard Supreme Court
7 precedent that says when -- that the Federal Court, not an
8 administrative tribunal of a pension fund, is the one that
9 adjudicates the probate issue.

10 So point number one, if this Court is going to find
11 that the probate exception doesn't apply, interpretation
12 consistent with the Supreme Court holding and in Markham and
13 Marshall is that Your Honor would take this issue, and all the
14 probate issues to which the probate exception does not apply,
15 and adjudicate those here. Not an administrative tribunal.
16 And I -- I don't want to belabor the point, but I want to make
17 sure that I'm clear. And I believe I'm clear when I make that
18 point about jurisdiction on it. That's my first point.

19 The Court -- that's why I apologize if my argument
20 sounds arrogant because I don't mean to be. But the first
21 point is that it's jurisdiction. We do not agree that parties
22 in a Settlement Agreement, class action or otherwise, can
23 disregard the Supreme Court rulings in Markham by a contract.
24 To -- to create jurisdiction in a body on a probate issue when
25 the law is that Federal Courts don't have jurisdiction unless

1 they fall within -- there's some exception. And -- and the
2 Supreme Court ruling says so. The other -- so now, I want to
3 go to this point.

4 THE COURT: So let me just -- okay. Hold on a
5 second, though.

6 MR. TORRES: Sure.

7 THE COURT: You -- so the Settlement Fund, okay, is
8 saying, "Look, we" -- "we are arguing that the probate
9 exception is" -- "does not apply here." They're not seeking to
10 administer Mr. Villagomez's Estate, that is left to the purview
11 of the --

12 MR. TORRES: Right.

13 THE COURT: -- of the Superior Court. They're not
14 seeking to annul the will. Instead, they're asking to resolve
15 a -- specific issues, which required the Court to interpret and
16 enforce the Settlement Agreement. And, you know, the Federal
17 Court -- okay. As we looked at the Marshall case and so forth,
18 it says that the Court may exercise jurisdiction to adjudicate
19 rights and property that is subject to a state probate
20 proceeding, i.e., the -- the local Court, or the final judgment
21 does not undertake to interfere with the local court's
22 possession. Same to the extent that the state court or the
23 local Court, Commonwealth court, is bound by the judgment to
24 recognize the right adjudicated by the Federal Court. And the
25 Court is just citing to Marshall quoting Markham.

1 So if we're really looking at -- from what I'm
2 hearing from Ms. Torres-Ripple is they're asking that the
3 Court -- I mean, that -- they're requesting that there be an
4 adjudication of its rights under the Settlement Agreement.
5 They're asking that there's an interpretation and enforcement
6 of that particular paragraph in the Settlement Agreement that
7 they want to be looked at here through their process.

8 MR. TORRES: Yep.

9 THE COURT: And they are not -- as I understand it,
10 the -- the Settlement Fund is not asking this Court to direct
11 payment of funds from the probate estate for the alleged
12 overpayment to Mr. Villagomez. They're not doing that. They
13 don't even know -- you know, I'm not even sure they -- well,
14 it's not clear what the amount is. I guess Ms. Torres-Ripple
15 has to tell us that. I guess I was a little confused, too,
16 with the amount, like you are, because they start -- we start
17 off with 45 and then they're up to a different number now. And
18 then there's a six year -- six-year period that -- that's part
19 of the contract law in the CNMI.

20 As -- as you know, Mr. Torres, there's been no final
21 determination that an overpayment has, in fact, occurred. Or
22 that it is the fault of anyone. I mean, if it -- I'm assuming
23 that if it was the fault of the Retirement Fund, whatever,
24 intentional fault, negligent fault, reckless fault, there
25 could be some, you know, mitigation with regard to a

1 resolution, but there's been no final determination. And
2 that -- that determination still must be made through the
3 process that has been spelled out in the Settlement Agreement.
4 And as memorialized in the judgment. And in any event, you
5 know, a final determination has to be made by an arbiter,
6 whether or not this was -- any overpayment. And if that is
7 made, let's assume that they say, Okay, there was an
8 overpayment of two hundred dollars, just for -- you know, just
9 to throw out a number, the Settlement Fund could then ask that
10 that be reduced to a judgment. And then seek to have that
11 recognized by the Superior Court in the probate action.
12 Couldn't they do that? I think that's kind of, you know --

13 MR. TORRES: Well, yeah.

14 THE COURT: -- we're -- that means that the Federal
15 Court is respecting the probate court. They do what they
16 continue to do. Go ahead.

17 MR. TORRES: So -- so, Your Honor, that's -- I get
18 it. I mean, and that's my -- the thrust of my -- one of my
19 points is that, the -- it can't -- can't do that. By -- it
20 cannot be done by the rulings in Markham. It's -- there's no
21 case for that proposition to have a claim in probate work
22 through the -- the Court and by Settlement Agreement,
23 adjudicated before an administrative tribunal in a court with
24 federal -- with jurisdiction. It's always the Federal Court.
25 I don't agree, and we don't agree, because the case law doesn't

1 support that proposition.

2 That's -- that's why I'm pointing out that,
3 Your Honor, when you're going to look at the Settlement
4 Agreement, you have to interpret it as to what the law is, and
5 we say the law of Markham and others --

6 THE COURT: Uh-huh.

7 MR. TORRES: -- don't ever support that proposition
8 that when a -- when a -- when a pensioner has passed away, that
9 you're going to continue. Because look at the Carpenter's
10 Trust case, the Court there did the analysis that -- and that's
11 why I'm saying, Your Honor, look at what the settlement -- the
12 Trustee is asking for. She's asking for 56,000, that's her
13 claim. I don't know why it can't be clear for them because
14 that's what they put into Superior Court, 56,913.77. And what
15 are they wanting to do? They're asking, Your Honor, to enjoin
16 her from raising any defenses. Stay all proceedings, and it's
17 going to be all adjudicated. What is it? What is the
18 settlement fund's claim? It's a claim of overpayment. What's
19 a claim of overpayment? 56,000. They want 56,000. And they
20 want -- and it's never been adjudicated to finality to a
21 judgment, by the way. And they want the -- the Administrative
22 Appeals process to say just that. That an order from the
23 arbiter -- arbitrator will say 56,000 is what now the estate
24 owes. And then they take that and they walk into probate court
25 and say, "Here. We want to recover from the Administratrix and

1 the Estate, 56,000." That's a recovery action. And the
2 analysis in the Carpenter's Trust test -- case -- trust case
3 says when you have an in rem action seeking a res, in res is an
4 in rem action, and I quote Marshall, and --and in Marshall they
5 said that an in rem is against property, as opposed to in
6 personam, an action determining the title to property and the
7 rights of the parties. So they want to walk in and have an
8 administrative tribunal adjudicate that, finalize it, and walk
9 in.

10 Well, the Markham decision says, a court may not
11 exercise its jurisdiction to disturb or affect the possession
12 of property in the custody of the court. It may exercise its
13 jurisdiction to adjudicate rights in such property, where the
14 final judgment does not undertake to interfere with the State
15 Court's possession, same to the extent that the State Court is
16 bound by the judgment. There is -- under the statute, there is
17 no question that the Trustee has a right to pursue overpayment
18 under Section 839. There's nothing to adjudicate. There's no
19 question there. In fact, Your Honor, when we filed the
20 petition, when we filed the petition to admit the Estate in
21 probate, we pled it. We pled that the Administratrix in her
22 petition has received this notice of this claim. And we don't
23 know what's the status of it, but we informed. So there's no
24 need for the administrative tribunal to adjudicate that they
25 have a right to a claim. The statute already gives them that.

1 So what's there to adjudicate? The money
2 entitlement. And why is that a problem? Because if you allow
3 it, then you're going to have a conflicting judgment because
4 you have secure creditors, such as CitiTrust Bank, and you
5 have funds in there and it's subject to a mortgage. And if
6 they take away -- if the -- if the Trustee comes in and says,
7 "Oh, now we have an administrative decision and it says we get
8 56,000 pursuant to the agreement." And here, "pay us." And
9 the Administratrix cannot pay the CitiTrust Bank, who's a
10 secure creditor, and then it defaults on that and the property
11 is foreclosed upon, that's absolutely disturbing and intruding
12 on the probate process.

13 And that's where the Court in -- in Markham says when
14 you're going to be doing that and you're pursuing citing
15 Carpenter's, and even the Tolosa case, which is in the District
16 Court of Guam, the analysis is -- is right there. And they
17 discuss why the courts -- the Federal Court will not do that
18 because it's a claim for money. And they wanted to quiet
19 title, making her the sole heir in Tolosa, that would disturb
20 the possession of real property. And so using the Marshall
21 analysis, distinguishing that in Marshall it was an in
22 personam action. But in Tolosa, they were looking to reach a
23 res, property in the custody of the court. When you're doing
24 that, that's what the Trustee is trying to do.

25 And so, Your Honor, it's a thinking like, wait a

1 minute, you know, what's the harm in this Administrative
2 process? I mean, there's mediation. Well, if there's
3 mediation, it's not resolved. An arbitrator is the final
4 arbiter. And you've already heard my argument that that cannot
5 be under the holdings of Marshall about this Court having
6 jurisdiction. But in addition to that, the nature of the
7 Settlement Fund's claim is an action for recovery of property,
8 overpayment. Just like it was in the Carpenter's Trust. That
9 they never paid. That one was a failure to contribute. Here
10 it's an overpayment, but the analysis is the same. When --
11 when Mr. Bartrum, I think, like Mr. Villagomez, was no more,
12 and because of the properties committed to probate proceedings
13 that in rem pursuit for arrest and recovery, you go to court
14 because the probate exception applies, and, Your Honor, this
15 is -- and quite -- to be quite honest, I mean, I've never dealt
16 with a probate exception. I didn't know about it until
17 Your Honor's order pointed it out to us. And I submit that the
18 Trustee never knew about that either because she never asserted
19 it. But when we look at the case law, the Markham is an
20 interesting decision, but it's a doctrine --

21 THE COURT: Uh-huh.

22 MR. TORRES: -- based on abstention and the younger
23 cases. It's a doctrine based on abstention, where you don't
24 have custodial alleges of -- of properties between two courts
25 fighting over property. And it's a doctrine of when it's all

1 committed and -- it doesn't preclude courts of equity by the
2 Federal Courts in favor of creditors like legatees and heirs to
3 establish their claims.

4 Again, the Trustee and the Settlement Fund's claim is
5 already established in probate court. It's timely here. We're
6 not disputing timeliness like Hofschneider and Benavente. We
7 aren't contesting that. We've pled it that there is a claim.
8 The statute says they're entitled to pursue recovery, that's
9 fine. What we asked when we -- when we requested the status
10 conference is, can we get some particulars of what your theory
11 of your recovery so that we can respond on whether we're going
12 to allow or disallow the claim? Or what's -- how do you come
13 at this amount because it was 46,000 in nine -- in 2012. Now
14 it's 56,000. And why didn't you pursue it in -- and this is
15 the question we ask: Why didn't -- why didn't you give him a
16 hearing in 2015? Why'd you wait until he died? And we don't
17 know what else Mr. Villagomez could have brought up. But now
18 the Administratrix is trying to get some facts. And so you
19 have the danger of conflicting decisions, and -- and that's
20 what the Trustee is asking.

21 THE COURT: Yeah, I think -- I think -- well, so
22 Mr. -- Mr. Torres, I mean, you know, your argument has some
23 appeal with regard to like why was there this gap? And -- and
24 what exactly is the -- what exactly is the Trustee requesting
25 as overpayment? What is it? I guess I'm not clear on that

1 either. But what I am clear it is that prior to the creation
2 of the Settlement Fund, the Retirement Fund had at least
3 initially determined that they believed Mr. Villagomez had been
4 overpaid. And Mr. Villagomez wanted -- he said I want to
5 appeal that decision.

6 And you're right, there was no appellate process
7 given to him necessarily, just because they weren't ready,
8 there was a lot of things going back and forth. I mean, it was
9 a pretty contentious case, as you know. Mr. Torres, you know
10 that that's -- it was a very contentious case. And -- and so,
11 we see that he filed the appeal decision. The Settlement Fund
12 was created, the assets were transferred and the Retirement
13 Fund assets were transferred and assigned to the Settlement
14 Fund. And any overpayment to Mr. Villagomez by the Retirement
15 Fund now is considered a receivable, which is an asset that was
16 subsequently transferred and assigned to the Settlement Fund,
17 right. So there's no dispute that, as far as the Court can
18 see, that there's no dispute that Mr. Villagomez did not opt
19 out of being included in the settlement class. So he agreed to
20 be bond by the Administrative Appeals process to resolve the
21 claimed overpayment. When he passed away, his rights had
22 passed to his Estate. And the Settlement Agreement, as we've
23 already talked about, did provide that the terms of the
24 agreement would apply to his heirs, successors, and assigns.
25 I've already said that the judgment did specify this.

1 Now, so just as Mr. Villagomez was required to comply
2 with the appeals process, so would have -- so would his
3 daughter, the Administratrix, be bound to proceed to resolve
4 the dispute of the claimed overpayment.

5 Now, I understand what you're saying, like, look, you
6 know, may -- maybe -- maybe it should be that -- maybe it
7 should be that these issues of -- of laches the defenses,
8 unfairness, and so forth, it definitely could be brought up in
9 the administrative process. Your client, Ms. Villagomez, can
10 say, "Look, why was this" -- "why did this take so long to get
11 to" -- "to my dad and now it's come to me?" They can just do
12 that. I mean, there's nothing to prevent that. And -- and so,
13 the -- the only issue really is can -- should the Court --
14 well, first of all, you know, the relief that they're seeking
15 is they want the Court to declare -- they, meaning the
16 Trustee -- want the Court to declare that this Court has
17 exclusive jurisdiction to enforce and interpret the Settlement
18 Agreement. I would agree with that. But I will not agree that
19 I should stay the probate action in the Superior Court of the
20 CNMI since the probate exception would bar such an act by the
21 Court. I do believe that -- and I -- I do want to give Ms.
22 Torres-Ripple a -- a chance to respond to your arguments.

23 I don't think it's -- I don't think it's -- well,
24 I -- I don't think it would be impossible or disallowable or in
25 any way forbidden by the Trustee to have you make these very

1 emotional and some logical -- you know, logical arguments on
2 behalf of your client at the appeals process.

3 But thank you for -- for your argument, Mr. Torres.

4 MR. TORRES: Your Honor, may I just finish a couple
5 of points that I wanted to --

6 THE COURT: Sure. Sure.

7 MR. TORRES: -- I wanted to do.

8 THE COURT: Go ahead.

9 MR. TORRES: Your Honor, the one thing is that this
10 kind of, I don't know, I'm not sure what the -- you know, the
11 Court's asking. I'm not sure what the Trustee is wanting in
12 its claim. I just want to be clear that the Trustee in her --
13 her filing with the Superior Court is claiming money. They are
14 wanting an adjudication that they are entitled to 56,913.77
15 from the Estate. And -- and -- but now they want that claim,
16 they want that determination to be made not by Superior Court,
17 not by Your Honor, but in the administrative process. And
18 that's -- that's an important -- really important point to
19 drive home, because there's no -- there's no vagueness about
20 the Trustee's intentions. And she's wanting that forum in
21 order to get that final ruling and -- and then take that final
22 ruling, if she prevails, and then walk into probate court and
23 enforce it, that's exactly what she's going to do. It's not an
24 adjudication of does -- what are her rights or what are her --
25 you know, what authority does she have, it's not in the

1 administrative tribunal. There's no -- there's no issue of
2 that. There's no issue of that at all either on the Settlement
3 Agreement or on the statute, but they're going to win on the
4 fact that they have rights to recovery of overpayment. So what
5 is going to be the end result? The end result is going to be a
6 recovery order. And that's why the probate exception stands
7 and the analysis in the Carpenter's Pension Trust, as well as
8 Balestra, says that when you're going that way, you are moving
9 into the intruding into the probate courts and you do have the
10 danger of conflicting results. And that's what the research
11 shows us. That's what the case law shows us. And the courts
12 do struggle with where's the line between, you know, intrusion
13 and necessity. Well, I submit that the cases say that when
14 it's tort actions or in personam, things like that, then, yeah,
15 you -- you -- the probate exception applies and -- but,
16 otherwise --

17 THE COURT: Well, let me just say -- but, your
18 argument that -- that the Trustee is going to walk over to
19 probate court and tell the probate judge, "Hey, you got to do
20 this." They're not going to do that. They're going to say,
21 "Listen, we have a judgment here. We" -- "we're going to ask
22 you to recognize it." The probate court can say whatever they
23 want to say. Right? They can review it.

24 MR. TORRES: Right, but what they're asking --

25 THE COURT: And make an --

1 MR. TORRES: Sorry, Your Honor, but it's not the --
2 it's not the probate court that is being enjoined in this
3 motion, it the Administratrix. She's going to be muzzled,
4 restrained and confined from saying anything by Your Honor's
5 order by virtue of the Settlement Agreement and -- and that's
6 the problem is that she can't say anything because she -- she
7 can't say --

8 THE COURT: But that's not true, though. Mr. --
9 Mr. Torres, that's not true. I mean, I should ask the -- why
10 don't we ask the -- the Counsel -- Counselor how do they -- how
11 do they proceed with their mediation. Why don't we ask them.
12 I'm assuming it's very informal. Can you tell us that, Ms. --

13 MS. TORRES-RIPPLE: For --

14 THE COURT: -- Ms. Torres-Ripple?

15 MR. TORRES: For mediation in -- in the
16 administrative -- the Settlement Fund?

17 THE COURT: Yeah.

18 MS. TORRES-RIPPLE: Yes, Your Honor, to describe the
19 mediation process. Well, first of all --

20 THE COURT: Well, I mean, just, like, for example,
21 like if somebody -- whoever just walked in, you said you
22 settled a few --

23 MS. TORRES-RIPPLE: Uh-huh.

24 THE COURT: -- they walked in, they've talked --
25 spoken to the mediator, Collins, how has it worked out? Has it

1 been such that the Claimant is muzzled?

2 MS. TORRES-RIPPLE: No, we -- it's actually been
3 working out pretty well. We're very grateful to this Court for
4 appointing Judge Collins, and -- and we've managed to settle a
5 couple of cases, including some very difficult ones. And so
6 it's been going well.

7 THE COURT: So tell us the process.

8 MS. TORRES-RIPPLE: The pro- --

9 THE COURT: So tell us the process so that Mr. --
10 because Mr. Torres feels very strongly that his client will be
11 muzzled, so he wants to be protective of her.

12 So, go ahead, tell us.

13 MS. TORRES-RIPPLE: Your Honor, that is not the case.
14 And, in fact, Mr. Torres was involved in one of our mediations,
15 so he is aware of the process. The process is that we go
16 through mandatory mediation. We talk informally between the
17 parties. And we ensure that all members, all individuals who
18 have decision-making authority are present, so that's key. And
19 from that point, we go back and forth. We have breakout rooms
20 with -- you know, Judge Collins has breakout rooms. A breakout
21 room with the Settlement Fund and another breakout room with
22 the Appellant, and we go -- we go from there.

23 And so far, like I've said, it has been working well.

24 MR. TORRES: So, Your Honor, that's not what I'm
25 talking about. I'm talking about --

1 THE COURT: Oh.

2 MR. TORRES: -- in probate --

3 THE COURT: I thought that --

4 MR. TORRES: No, I'm talking about when the, quote,
5 "final decision or order" if there is no settlement in
6 mediation and it goes to final arbitrator decision, the
7 arbitrators --

8 THE COURT: Right.

9 MR. TORRES: So that's what I'm talking about, but if
10 you -- you just said it at the beginning of -- Your Honor just
11 said it at the beginning that the Trustee seeks an order from
12 enjoining the Administratrix from asserting any defenses.
13 That's in probate court, too, so -- among other things.

14 So the person that's muzzled and where, is the
15 Administratrix in probate court, because despite the fact that
16 she could assert any defenses here against the Trustee, as a
17 result of that process, she's -- she's the one that is subject
18 to the jurisdiction of the Court and she has to just be quiet
19 and the ruling is the ruling, and she can't -- she would be
20 placed in a conflict between who does she answer to. Well,
21 she's confined with one ruling of an arbitrator from the
22 administrative tribunal and the other side to the judge where
23 you have creditors and heirs to whom she owes a fiduciary duty
24 as to their claims.

25 And then she -- let's just assume for the

1 hypothetical that the arbitrator rules 56,000 is owed by the
2 Estate to the Settlement Fund. The Administrator can't say
3 anything, can't raise any defenses. She's done. She has to
4 walk over there and just sit quietly. And then on the other
5 side, what about the creditors and what about the heirs, she
6 can't assert any defenses in probate court. And then you have
7 a -- she's confined. That's what I'm saying is she's muzzled.
8 And that's the problem that has been discussed.

9 THE COURT: Oh.

10 MR. TORRES: And -- and it sounds -- you know -- and
11 I know Your Honor is like, okay, we have the Settlement
12 Agreement and it sounds so, you know, kind of workable, but
13 that's not -- that's not this case in the probate. There are
14 legitimate disputes that the Administratrix can raise and --
15 and challenge: Breach of contract.

16 THE COURT: But she -- but she can raise, but --
17 yeah, but I -- it's clear she can reach -- she can -- she can
18 raise those issues, though, with the settlement judge; whatever
19 she has. If she feels that the fifty -- what -- let me -- let
20 me just clarify.

21 Ms. Torres-Ripple, can you -- can you tell us exactly
22 what you are seeking for purposes of this Administratrix?
23 Because I think me and Mr. Torres are confused about that.

24 What's the amount?

25 MS. TORRES-RIPPLE: The amount is 56,000 -- one

1 moment.

2 MR. TORRES: 913.

3 MS. TORRES-RIPPLE: 56 --

4 THE COURT: Okay.

5 MS. TORRES-RIPPLE: -- 913.77.

6 THE COURT: Okay. And from what period of time is
7 that, again? Can you just clarify that, because you -- you
8 talked about a six-year period that you felt was going to be
9 shaved off; is that correct?

10 MS. TORRES-RIPPLE: Yeah, so it's six years from the
11 date of the adverse decision letter, so it's May 6, 2012,
12 through May 15, 2021.

13 THE COURT: 2012, '13, '14, '15, '16, '17, '18, '19,
14 '20, '21. Okay. I'm sorry. May what? Okay, May 6th, 2012,
15 to May 6th, 2021?

16 MS. TORRES-RIPPLE: To May 15, 2021. We weren't
17 informed on time, so if we aren't informed --

18 THE COURT: Okay.

19 MS. TORRES-RIPPLE: -- on time before the 15th pay
20 period kicks in, it -- it's -- it includes that.

21 MR. TORRES: I think it means that --

22 THE COURT: Okay. So --

23 MR. TORRES: -- you reach back six years from May
24 10th, 2021.

25 THE COURT: Oh, I see.

1 MS. TORRES-RIPPLE: No, Your Honor, that's incorrect.

2 THE COURT: All right.

3 MS. TORRES-RIPPLE: We reach -- it's six years from
4 the date of the adverse decision letter. And so the date of
5 the adverse --

6 THE COURT: Well, that was in twenty --

7 MS. TORRES-RIPPLE: -- letter is --

8 THE COURT: -- 2012.

9 MS. TORRES-RIPPLE: Right.

10 THE COURT: Yeah, 2012, right?

11 MS. TORRES-RIPPLE: Yeah. Correct.

12 THE COURT: I thought the adverse decision letter
13 was -- was it April 30th, 2012?

14 MS. TORRES-RIPPLE: No, it's May 7, 2012.

15 THE COURT: Oh, May 7th, 2012. Okay. That's right.

16 Okay. Well, I've got some dates here, maybe I'm just
17 looking -- I saw an April -- I saw a letter of overpayment from
18 the Retirement Fund -- oh, May 7th, 2012. Excuse me. You said
19 May 7th, right?

20 MS. TORRES-RIPPLE: Yes. Correct.

21 THE COURT: Yeah, that's right. May 7th, 2012, the
22 Retirement Fund sent Mr. Villagomez a letter of overpayment,
23 and adjustment of benefits, a letter of overpayment in the
24 amount of 45,680 as of April 30th, 2012.

25 All right. So when did you reach back? What did you

1 say, from which then? You went from May 7th, 2012, to what.

2 MS. TORRES-RIPPLE: May 7th, 2006, through May 15 of
3 2021.

4 MR. TORRES: I don't -- and this is not --

5 THE COURT: May 7th --

6 MR. TORRES: I'm sorry.

7 THE COURT: Go ahead. Go ahead. What was that?

8 MR. TORRES: We just don't know. These are not facts
9 that are known to the Administratrix. We don't know what
10 they're doing.

11 THE COURT: Uh-huh. Do you guys sit down and talk to
12 each other?

13 MR. TORRES: I'm sorry?

14 MS. TORRES-RIPPLE: I'm sorry?

15 THE COURT: I mean, that might help. Do you guys all
16 sit down and talk to each other?

17 MS. TORRES-RIPPLE: We haven't yet. We've tried to
18 inform the Administratrix actually at the status conference
19 that the pre-mediation conference -- because, normally we start
20 with a pre-mediation conference even before the mediation
21 conference to kind of --

22 THE COURT: Uh-huh.

23 MS. TORRES-RIPPLE: -- familiarize everybody with the
24 process. And so --

25 MR. TORRES: Well --

1 MS. TORRES-RIPPLE: -- at the status conference was
2 when the Administratrix objected to going forward with that
3 process and that's why we are here today, to seek enforcement
4 of Section 10.0(k).

5 MR. TORRES: So, Your Honor, you asked if we talked
6 to each other.

7 THE COURT: Okay.

8 MR. TORRES: That's why the Administratrix asked for
9 the -- you know, the status conference with those issues, and
10 they never talked to us. They never responded to clarify the
11 points.

12 THE COURT: Well, so you asked for a status
13 conference, oh, in the probate court?

14 MR. TORRES: Right.

15 THE COURT: Is that what you're talking about?

16 MR. TORRES: Yes, Your Honor.

17 THE COURT: Oh, okay. In the probate court.

18 MR. TORRES: Yeah.

19 THE COURT: Okay.

20 MR. TORRES: That's an exhibit.

21 THE COURT: And I --

22 MR. TORRES: So --

23 THE COURT: All right. Well, is there hope to -- to
24 speak to one another? I mean, you're both in the probate court
25 with Judge Camacho and you're in the Federal Court --

1 MR. TORRES: Yeah.

2 THE COURT: -- with Judge Tydingco-Gatewood --

3 MR. TORRES: So --

4 THE COURT: -- and I know -- I know it -- let me
5 just -- it doesn't -- it doesn't escape me, and I'm pretty sure
6 it doesn't escape the Trustee, that this is an incredibly large
7 amount of money that's being alleged here for overpayment. And
8 I'm sure it's causing some -- some stress upon the family.

9 So to the extent that we can relieve the stress, I'm
10 just wondering -- I mean, I can issue a decision. I do -- you
11 know, this is an important case, Mr. Torres and
12 Ms. Torres-Ripple, but I'm just wondering if -- if the parties
13 can just even come together and, perhaps, like reduce the
14 stress and maybe there could be matters that you have -- that
15 you know personally Mr. -- and directly, Mr. Torres, on behalf
16 of Administratrix and her father and family that -- that should
17 be related to -- to the Trustee.

18 MR. TORRES: So, Your Honor, of course, we -- we --
19 you know, I've Settlement -- Retirement Fund cases from 2006.
20 I mean, we've dealt with the settle -- I've dealt with the
21 Settlement Fund on various cases -- or the Retirement Fund.
22 And, yeah, it is -- it is a -- difficult, they're -- the
23 Surviving spouse, Ms. Patricia Villagomez, just passed away
24 last fall.

25 THE COURT: Right.

1 MR. TORRES: After -- and so -- but -- but, yeah, I
2 mean, if Your Honor is suggesting that the parties meet and
3 confer to see if it can be resolved, our answer for the
4 Administratrix is, of course, we have to do that. We should
5 always do that. And we will not say no. We will say yes. We
6 will -- take care of Counsel on that. But it's -- you know --

7 THE COURT: Yeah, I think -- I think it's a good idea
8 because, you know, your -- you had to run into probate court,
9 Mr. Torres, you felt like you did. And the Trustee felt like
10 on behalf of the Fund, she needed to also run to federal court.
11 But to the extent that the two of you could come together,
12 because there is this probate exception, and the question is,
13 does it apply. And -- and, you know, you've seen it in -- in
14 the Marshall v. Marshall case and the other cases. They're
15 very -- very -- they get very emotional and very high -- a lot
16 of high intensity in terms of feelings. But I might -- I would
17 suggest that -- and thank you, Mr. Torres, I know you're always
18 a fine lawyer and a gentleman and very civil. And I know that
19 Ms. Torres-Ripple and Ms. Tang also is a fine lawyer. So I
20 would -- I would suggest that the parties meet and confer, you
21 know, and try to do that no later than next week Friday.

22 I won't issue my decision until after that, if I find
23 that the parties can't resolve, but -- resolve the matter, but
24 at least -- at least speak to each other, and -- and speak to
25 each other about how you -- how you truly feel. And maybe you

1 may have legitimate arguments that -- that can be made. And if
2 you want to meet with the Judge Collins on an informal basis,
3 you can do that as well.

4 I'm pretty sure that he's amenable to that.

5 Would that be acceptable to you, Mr. Torres?

6 MR. TORRES: So, Your Honor, the -- what's acceptable
7 is we're absolutely willing to confer with the Trustee on -- on
8 resolution.

9 THE COURT: Okay. Okay.

10 MR. TORRES: I'm -- I'm -- I need to preserve, you
11 know, our rights in terms of not going into mediation, if we're
12 going to capitulate to that, but we've done one --

13 THE COURT: Right.

14 MR. TORRES: -- as Ms. Torres-Ripple indicated with
15 Judge Collin [sic] and he's -- he is a good mediator and we --
16 it was effective, we resolved it and so -- but, if
17 Your Honor -- we take your suggestion, Your Honor, we will for
18 the Administratrix meet and confer with the Trustee to see if
19 we can work this out.

20 THE COURT: Yes.

21 MR. TORRES: And if we can't, and we may need a
22 mediator if Judge Collins would be willing to do it, you know
23 as part of our outside of any court dispute resolution, without
24 binding -- you know, confining anyone, then, yes, we're good.
25 We're good with that too.

1 THE COURT: Okay. Well, I don't I -- okay, I -- that
2 seems reasonable to me. I mean, I think -- you know, we
3 haven't gone down this path, Mr. Torres, on this probate
4 exception and how it intersects with the settlement fund, so it
5 is -- you know, it's probably a case of first impression here
6 for us, as well as -- as far I can see, but I think -- may I
7 ask Ms. Torres-Ripple and the Trustee, would that be amendable
8 to both of you?

9 MS. TORRES-RIPPLE: Your Honor, with respect to the
10 meeting and conferring, yes, it is. However, I would like to
11 state that we are not waiving and we are preserving our right
12 to -- to -- to adjudicate the claim of overpayment in --
13 through the Administrative Appeals process under Section
14 10.0(k), which, again, you know, this -- this Court has
15 approved.

16 THE COURT: Right. Okay. And may I ask the Trustee,
17 Ms. Tang --

18 MS. TANG: Yes.

19 THE COURT: -- would that be acceptable to you?

20 MS. TANG: Thank you, Your Honor, I think that we're
21 always open to settlement. We have worked through some very
22 difficult cases with Judge Collins, he's an excellent mediator.
23 I think if parties can get together to mediate under whatever
24 circumstances, it's always a good thing, and so --

25 THE COURT: Okay.

1 MS. TANG: -- we're okay with that.

2 THE COURT: Okay. Thank you, Ms. Tang.

3 MS. TORRES-RIPPLE: Your Honor, may I just seek to --
4 to clarification, though?

5 THE COURT: Yes, Ms. --

6 MS. TORRES-RIPPLE: Will the administrative appeal
7 rules apply?

8 MR. TORRES: I'm sorry?

9 MS. TORRES-RIPPLE: Will the administrative appeal
10 rules apply to the --

11 THE COURT: Well, why don't I --

12 MR. TORRES: That was my point, Your Honor.
13 That's -- that's why we're -- you know, either we -- we put our
14 swords down or we pick them up. And so the Admin -- the
15 Trustee is saying we're going to preserve it, and will we --
16 will the Administrative Appeals rules apply? Our answer to
17 that is no, we're not agreeing to that. And so that's why I
18 just said outside of any court jurisdiction or mediation.

19 So either they want to talk about settlement, and we
20 will. But if they want to start saying under -- under
21 Administrative Appeals rules, then our answer is no. Then,
22 we'll just ask the Court to rule.

23 THE COURT: Yeah, I think it becomes -- yeah --

24 MS. TANG: Your Honor, may I be heard?

25 THE COURT: So rather -- yes, go ahead, Ms. Tang. Go

1 ahead.

2 MS. TANG: Your Honor, may I suggest that the parties
3 agree that to maintain the status quo pending the issuance of
4 your decision if we decide to mediate, arbitrate, the status
5 quo is maintained today, regardless of what the parties do
6 between the time that -- today and the time that you issue your
7 decision; does that help?

8 THE COURT: I think that's fair. Yeah, does that
9 help, Mr. Torres? I think that's fair.

10 In other words -- in other words, I'm hearing the
11 Trustee say, Look, status quo is this: Everybody's rights are
12 continually -- to continue to be preserved, you know, forever,
13 if you will, and -- but between the time of today and the
14 time -- like, say a week. Let's say a week, or, if you need
15 two weeks; you give me two weeks. Whatever you do within the
16 two weeks, that's just between the two of you-all.

17 How's that? Is what you're saying?

18 MS. TANG: That's what I'm saying.

19 THE COURT: And you guys --

20 MR. TORRES: So --

21 THE COURT: That's right, I understand that.

22 MR. TORRES: So I suggest, Your Honor, that the Court
23 stay ruling on -- on the motion to allow --

24 THE COURT: I will do that.

25 MR. TORRES: -- until at least until -- until

1 February 11th. To allow the parties to resolve it. And if
2 failing resolution, we'll inform the Court, and then the Court
3 can make a decision.

4 THE COURT: All right. I can issue my decision after
5 that. Right. I'll have my decision ready.

6 MS. TANG: Your Honor, we do have briefing in the
7 probate court that has not been -- that is due on Monday, I
8 think.

9 MS. TORRES-RIPPLE: Right. Exactly.

10 MS. TANG: And, Your Honor, I think that if the
11 parties will stipulate to kick that over, and -- so there won't
12 be -- we're going to move to do the same thing here and if they
13 issue a decision before you do, then we would have this
14 strange, you know, competing decisions. And I want to avoid
15 that, and I think that was why we came ex parte.

16 If Mr. Torres will agree on the record, that they
17 will stipulate to -- to -- to moving that back, I think that
18 would work for all of us and we don't have briefing on the same
19 issue in a different court and potentially a competing
20 decision while yours is pending.

21 THE COURT: Mr. Torres?

22 MR. TORRES: No, Your Honor. I'm not going to agree
23 to that. Judge Camacho was painfully clear in this order about
24 the briefing of the parties, so I know he will -- I'd like to
25 see if either we resolve this or not.

1 THE COURT: I mean, I could issue my decision
2 shortly. That's -- but I wanted to give the parties an
3 opportunity to try to resolve this so that both parties don't
4 have to duke this particular issue out either in the federal
5 court or in the probate court.

6 And, you know, there -- and -- and, as you may know,
7 Mr. Torres, I think you would, I know Ms. Tang knows, that
8 previously when there was an issue of, you know, the Retirement
9 Fund, the case was in the local court previously, then it was
10 removed to the district court and so I did have to work with
11 Judge Govendo and the other judges to -- you know, we just
12 tried to -- we tried to be very respectful of each other's
13 jurisdiction. And -- and I still am very respectful of the
14 probate court jurisdiction of the Judge Camacho, the local
15 court, but I -- I guess -- well, so are we at a standstill; is
16 that what we're saying?

17 MR. TORRES: No, I mean...

18 MS. TANG: So, Your Honor, if we don't have a -- I'm
19 sorry, if the briefing on Monday is a briefing on the
20 jurisdictional issue is the same issues that we are discussing
21 today --

22 THE COURT: Uh-huh.

23 MS. TANG: -- if I may, Your Honor, we commit to
24 mediating and -- and, you know, I -- I think at this point we
25 request that you issue your decision.

1 The Settlement Fund will commit to working with the
2 Administratrix to try to resolve some of these issues, but, you
3 know, I think we've tried to accommodate their concerns about
4 waiver. And if they're not willing to -- to address the -- or
5 stipulate to a delayed briefing on the probate matter, then we
6 don't have a choice. I don't see how we can try do that. And
7 I understand your effort to try to get the parties to come
8 together, but I just don't see how we -- we're just not going
9 to jeopardize a -- have a situation where we have, you know,
10 this Court's decision, which can probably come out today or
11 tomorrow, when, you know, we end up briefing the same thing
12 next week and he issues it that afternoon. And then we get
13 these competing decisions, and it just makes the issue much
14 more complicated than it needs to be.

15 THE COURT: Well, let me -- Mr. Torres, you want to
16 address that then?

17 MR. TORRES: Yeah. Yes, Your Honor. I mean, it's as
18 if somehow the Administratrix and me are being difficult in
19 this process. I mean, we have set it out in the probate court
20 the issues. And so the Trustee runs over to -- to this court
21 and seeks this motion without even trying to discuss with us
22 about resolution. And now when we're talking about resolution
23 and say give it a week, the briefing schedule is moving
24 forward. And Your Honor is going to issue a decision. And
25 either we resolve it in a week --

1 THE COURT: Well, no.

2 MR. TORRES: -- and then if it's --

3 THE COURT: Okay. But I --

4 MR. TORRES: If --

5 THE COURT: But my point is: Maybe Judge -- maybe
6 Judge Camacho and I could just like be at a standstill for a
7 week on everything. I could be in standstill for issuing this
8 decision -- or at least to give you time to talk about it, the
9 both of -- both parties. And Judge Camacho can be at a
10 standstill on any briefing or any further orders or hearings.
11 We would take -- I would take no action and he would take no
12 action for -- how -- one week, if that's what it takes.

13 I mean --

14 MR. TORRES: Well --

15 THE COURT: -- I think that's fair because nobody's
16 going to get hurt.

17 MR. TORRES: We can -- the parties are going to go
18 into direct settlement discussions. We can have settlement
19 discussions tomorrow afternoon, Saturday. And if we don't
20 reach a resolution, we're just going to inform, Your Honor, you
21 know, make -- render your decision and the briefing in Superior
22 Court goes. There's no need to wait a week, the issue's --

23 THE COURT: We can do that too.

24 MR. TORRES: -- is not complicated.

25 THE COURT: Yeah. You could do that, too. I mean,

1 what is today, Thursday? I mean, I guess, you can do that. I
2 guess -- I mean, I don't know how -- okay.

3 So, therefore -- so is that how you want -- that's
4 your -- that's your final -- final statement there Mr. -- final
5 offer, Mr. Torres?

6 MR. TORRES: Yeah, my offer is let's have a
7 settlement discussion tomorrow or Saturday and let's put our
8 pencils to work if they want to settle and we do.

9 THE COURT: Okay. And if you're not able to settle,
10 then the Court -- you know, you let me know. They're --
11 they're brief is due by Monday, so either the Court -- once you
12 guys tell me, I'll have my order ready to issue out --

13 MR. TORRES: Okay.

14 THE COURT: -- let me just say that. But, I will --
15 but I want to just give you -- let me just tell you this, and I
16 think I've already alluded to this, and I -- I want to be fair
17 to Counsels. I -- I really think based on -- based on what has
18 been said, and, you know, like I said, the amount is extremely
19 high. The -- I think it would be a good -- good thing if the
20 parties do try to settlement. I do.

21 I mean, you have the family here. They're grieving
22 and they're still -- they're coming to Court, that's not -- not
23 a good thing.

24 Nobody wants -- everybody hates to go to probate
25 court unless it's a happy time, but that's -- that would be

1 my -- my -- my, you know, position.

2 But I've -- it's -- I'm inclined to say that this
3 Court does have exclusive jurisdiction to interpret and enforce
4 the Settlement Agreement. And I'm inclined to deny the request
5 to stay the probate action in Superior Court of the CNMI, since
6 the probate exception would bar such an action by the Court.

7 And I'm inclined to order the Administratrix -- I'm
8 not saying I'm going to do it, but this is what I'm inclined to
9 do based on the arguments heard today and the case law I've
10 read, I'm inclined to order the Administratrix to proceed with
11 the appeals process, including mandatory mediation and to
12 enjoin the Administratrix from taking any action in the probate
13 court that seeks to challenge the Settlement Fund's claim until
14 such time as the Administrative Appeals process has been
15 exhausted. Who's to say -- and I'm not saying that -- who's to
16 say that the Administrative Appeals process could come down and
17 say, "Guess what? There has been zero over-time payments that
18 should be ordered. There will be" -- "for whatever reason," I
19 don't know.

20 I don't know, because, honestly, I'm not intimately
21 involved in the settlement. I don't know what all the issues
22 are. And -- and, clearly, clearly, the Settle- -- the
23 Retirement Fund, you know, they did have, I remember
24 Ms. Pangelinan, all those others, who came before, they said
25 there was problems with keeping notes and keeping files and

1 trying to keep up with all of the -- you know, the amounts of
2 monies that went in and out. I mean, I saw that. We heard
3 that. And so we -- and they worked very hard, the Retirement
4 Fund and the Settlement Fund worked very hard to try to get all
5 of that resolved and cleaned up. To the extent that they did,
6 I mean, here we are right now, we are today and we're trying to
7 resolve it and there's not -- there's just a few cases left,
8 but these are important cases. And I understand that,
9 Mr. Torres, for your client, it's very important to her, and
10 it's also important to the Settlement Fund.

11 So that -- let me just say that's what I'm inclined to do.
12 I'm going to give the parties -- today is Thursday,
13 February 3rd, and so, you know, you guys have until Sunday to
14 figure out if you -- if you can try to resolve it. And if you
15 both want -- if you both want to resolve it, I'm pretty sure
16 you will. If you're unable to, then that's just the way the
17 ball bounces, but that's kind of where I'm going. Okay.

18 MR. TORRES: All right. Thank you, Your Honor.

19 THE COURT: Thank you, Mr. Torres.

20 Thank you, Ms. Torres-Ripple and Ms. Tang.

21 Take care.

22 MS. TANG: Thank you, Your Honor.

23 MS. TORRES-RIPPLE: Thank you.

24 THE COURT: You're welcome.

25 (The proceedings concluded at 3:09 p.m.)

1 CERTIFICATE

2
3 I, HEIDI M. DOOGAN, Official Court Reporter, in the United
4 States District Court for the Northern Mariana Islands, hereby
5 certify that pursuant to Section 753, Title 28, United States
6 Code, the foregoing is a true and correct transcript of the
7 stenographically-reported proceedings held in the
8 above-entitled matter and that the transcript page format is in
9 conformance with the regulations of the Judicial Conference of
10 the United States.

11
12 Date: March 12, 2022
13
14

15 /s/ Heidi M. Doogan

16 Heidi M. Doogan, RPR
17 U.S. Court Reporter
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